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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,042

12/04/2003

Kevin B. Smith

305221.01

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47973

7590

06/26/2009

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EXAMINER

SERRAO, RANODHI N

ART UNIT

PAPER NUMBER

2444

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,042	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> RANODHI N. SERRAO	<b>Art Unit</b> 2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-17 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-17 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06 March 2009 has been entered.

2. In response to the Requirement for Restriction/Election mailed on 21 April 2009, Applicant elected claims 15-17 and 42 for prosecution and cancelled claims 1-3, 5-7, 11, 24-25, 36-41 and 43.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 15-17 and 42 have been considered but are moot in view of the new ground(s) of rejection. Applicant argued in substance the newly added limitations claims 15 and 16 and the newly added claim 42. However, the new grounds teach these and the added features. See rejections below.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**5. Claims 15-17 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halevy et al. (2004/0153440) in view of Sim et al. (2002/0078174).**

6. As per claim 15, Halevy et al. teaches a system that employs dynamic load balancing to asynchronously process synchronous requests (see Halevy et al., paragraph 13-22), comprising: a processor that executes the following computer executable components stored on a computer readable medium: a query management component that: receives a web-based request from a client (see Halevy et al., Fig. 1 and paragraph 54); and publishes the web-based request in a queue (see Halevy et al., paragraph 62); an asynchronous processing component that: detects available processing engine capacity (see Halevy et al., paragraph 85); predicts future processing engine capacity (see Halevy et al., paragraph 86); and distributes portions of the web-based request among processing engines based on the detected and predicted processing engine capacity (see Halevy et al., paragraph 90-92); a process engine component that groups processing engine results; and an output component that returns the grouped processing engine results synchronous with the web-based request (see Halevy et al., paragraph 20-22).

But fails to explicitly teach an error handling component that automatically conveys one or more portions of the web-based request associated with a failed processing engine to another processing engine, wherein the client is not informed of a processing failure.

However, Sim et al. in the same field of endeavor teaches an error handling component that automatically conveys one or more portions of the web-based request associated with a failed processing engine to another processing engine, wherein the client is not informed of a processing failure (see Sim et al., paragraph 148). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Halevy et al. to a an error handling component that automatically conveys one or more portions of the web-based request associated with a failed processing engine to another processing engine, wherein the client is not informed of a processing failure in order to provide fault tolerance and scalability (see Sim et al., paragraph 143).

7. As per claim 16, Halevy et al. in view of Sim et al. teach the system of claim 15, further comprising an adapter that translates the web-based request received via TCP/IP, IPX/SPX, UDP/IP, HTTP, SOAP, or a proprietary synchronous protocol and conveys the translated web-based request to the processing engine component through an application processing interface (API) (see Halevy et al., paragraph 65-66).

8. As per claim 17, Halevy et al. in view of Sim et al. teach a system, wherein the adapter is one of a pluggable software component or an instance of an object (see Halevy et al., paragraph 62-65).

9. As per claim 42, Halevy et al. in view of Sim et al. teach the system of claim 17, wherein the queue is utilized to store information related to a type of connection through which the web-based request was received in order to track the web-based request during processing (see Halevy et al., paragraph 83).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ranodhi Serrao whose telephone number is (571)272-7967. The examiner can normally be reached on 8:00-4:30pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/RANODHI N SERRAO/

Examiner, Art Unit 2444